Sheet Metal Workers' International Association, Local Union No. 359, AFL–CIO and Madison Industries, Inc. of Arizona. Case 28–CB–4059

November 14, 1995

# **DECISION AND ORDER**

# BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

On June 8, 1995, Administrative Law Judge Earldean V.S. Robbins issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, <sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.

## **ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Sheet Metal Workers' International Association, Local Union No. 359, AFL–CIO, Phoenix, Arizona, its officers, agents, and representatives, shall take the action set forth in the Order.

Richard C. Auslander, Esq., for the General Counsel.

Rosemary Cook, Esq., of Phoenix, Arizona, for the Respondent.

Phil B. Hammond, Esq., of Phoenix, Arizona, for the Charging Party.

# DECISION

# STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge. This case was heard before me pursuant to a complaint which alleges that the Sheet Metal Workers' International Association, Local Union No. 359, AFL-CIO (Respondent or the

Union) violated Section 8(b)(3) of the National Labor Relations Act. The principle issue here is whether Respondent has violated Section 8(b)(3) of the Act by insisting to impasse that Madison Industries, Inc. of Arizona (Madison), agrees to the inclusion of an interest-arbitration provision in any successor agreement and by insisting that Madison abide by all terms of a successor agreement imposed on it by the National Joint Adjustment Board (the NJAB), that included an interest-arbitration provision.

#### FINDINGS OF FACT

## I. JURISDICTION AND LABOR ORGANIZATION

Based on the pleadings, I find that at all times material herein:

- A. Madison has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- B. Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Facts

For a number of years Respondent has been engaged, at its Phoenix, Arizona plant, in the fabrication of modular buildings. This fabrication work is performed by Madison's shop employees, also referred to as inside or production employees. After fabrication, the buildings are partially disassembled and shipped to the jobsite where they are reassembled by Madison's outside employees, also referred to as construction or building trades employees. The employee complement is seasonal with outside employees fluctuating between 10 and 30 and shop employees between 10 and 50.

For many years the outside employees were represented by Respondent Local 359 and the shop employees were represented by Sheet Metal Workers Local 485. Both Locals were parties to successive collective-bargaining agreements with the Air Conditioning Contractors of Arizona. Although not a member of this Association, Madison was bound by these agreements by virtue of memorandum agreements with the two Locals. The collective-bargaining agreement involved here was effective by its terms to July 31, 1993.

About 5 years ago, Local 485 merged into Local 359 with the outside employees and the shop employees continuing as separate bargaining units with separate contracts. After the merger, Local 359 claimed the fabrication work for the outside employees. This, however, was not the type heating, venting, air-conditioning (HVAC) work normally performed by them. Consequently, Madison was dissatisfied with their work and began subcontracting the fabrication work. Respondent filed a grievance regarding this subcontracting. On April 16, 1993, after a hearing, the Local Joint Adjustment Board (the LJAB) ruled against Madison and ordered it to cease the subcontracting and to pay the outside employees for the work they had lost due to the subcontracting.<sup>2</sup>

On April 21, Madison timely withdrew bargaining authority from the Association and, in June, commenced bargaining

<sup>&</sup>lt;sup>1</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>&</sup>lt;sup>2</sup>Chairman Gould has previously expressed the view that interest arbitration is a mandatory subject of bargaining on which a party may insist to impasse. *Sheet Metal Workers Local 162 (Dwight Lang's Enterprises)*, 314 NLRB 923, 926 fn. 12 (1994). Accordingly, he would overrule *Sheet Metal Workers Local 59 (Employers Assn.)*, 227 NLRB 520 (1976), and other cases holding that interest arbitration is a nonmandatory subject of bargaining. In the absence of a current Board majority to overrule that precedent, however, Chairman Gould agrees that the judge has correctly applied it here in concluding that the Respondent violated Sec. 8(b)(3).

<sup>&</sup>lt;sup>1</sup>Unless otherwise indicated, all dates hereinafter will be in 1993.

 $<sup>^2\,\</sup>mathrm{At}$  the time of the hearing here, an appeal from the arbitration award was pending in the Ninth Circuit.

individually with Respondent. Negotiation sessions were held on June 16, 30, and July 6. The negotiators for Madison were its attorney, Phil Hammond, and modular assembly line manager, Daniel White. Negotiators for Respondent were Business Manager Jack Stewart, Business Agent Ted Lewis, and Business Agent Dave Chacon. At the conclusion of the July 6 bargaining session, the Respondent determined that the negotiations were deadlocked. Under article X, section 8 of the then current contract,<sup>3</sup> such determination may be made unilaterally by either party which initiates a mediation process under the aegis of the NJAB. If the mediation is unsuccessful, a resolution of the dispute is submitted to the NJAB, whose unanimous decision is final and binding as to the terms of a new contract.

Although the collective-bargaining agreement does not limit the number of unresolved issues which may be submitted to the NJAB, the notice of unresolved dispute form states that no more than three, excluding wage/fringe package and contract duration, may be presented by either side. On July 12, Respondent made a unilateral submission to NJAB which listed, as unresolved, article X, section 8 (interest-arbitration provision), contract duration, certain wage/fringe benefit proposals, and a substance abuse proposal proposed by Madison. Thereafter, on about July 20, Madison made a unilateral submission in which it asserts that the unresolved issues exceed three in number and that article X, section 8 places no restrictions on the number of unresolved issues which can be submitted. Madison then listed seven items as unresolved. These include grievance/arbitration, contract duration, wages, contributions to all joint employer-union funds other than pension plans, restriction of the coverage of the contract to the geographical area described in the contract, health insurance, and provisions relating to apprentices. Madison's unilateral submission further asserts its adamant position that the interest-arbitration provision be deleted from any future

On August 2, Respondent and Madison appeared before the NJAB in San Francisco and presented their respective positions. At this time, it became apparent that settlement of the LJAB court matter, arising from the subcontracting of production work previously performed by shop employees but now claimed by Respondent for the outside employees, was impacting on the possibility of reaching an agreement as to a successor contract. Early in the proceeding Jack Stewart, representative for the Respondent, and John Sentell, Madison's general manager, were instructed by NJAB to leave the hearing room and attempt to reduce the unresolved issues to three. It is disputed as to whether Stewart and Sentell reached any formal agreement as to any of the issues. When they returned, however, it was clear that the major unresolved issues were grievance/arbitration, contract duration, and the jurisdictional dispute, including the court matter. No resolution was reached as to these matters.

On August 4, the NJAB issued a decision finding that the testimony established that the parties had resolved all issues regarding a new contract except for the duration of the agreement, the Employer's proposal to delete article X, and a method of resolving work jurisdiction disputes between shop and outside employees. It also designated a subcommittee panel to go to the local area with full authority to resolve

these contractual issues and to issue a final and binding decision thereon, to investigate the underlying issues involving work jurisdiction between shop and outside employees, and to make recommendations to the parties concerning the same.

On October 19, subcommittee members Richard J. Pierce, a management representative, and Roger F. Burk, a union representative, toured Madison's facility and heard testimony from the parties. Respondent was represented by Stewart, Chacon and Ted Lewis and Madison by Sentell and White. Also present was William Stephens as a NJAB observer. It is undisputed that Respondent and Madison again failed to reach agreement. It is also undisputed that the panel proposed that if Madison would accept a 3-year contract term and interest arbitration, the LJAB could be bypassed, the shop employees could perform the fabrication work, and Madison would be permitted to transport a three-person crew into Las Vegas instead of the heretofore permitted two-person crew.

There was discussion as to the lawsuit, during which Stewart said settlement would require a \$25,000 payment by Madison. Respondent's representatives also voiced objections to the proposed resolution of the jurisdictional dispute and to a three-person Las Vegas crew. At Sentell's request, a break was taken to permit him to discuss the proposed resolution with Legal Counsel Phil Hammond. Sentell testified that he went to his car and called Hammond, who advised him not to agree to interest arbitration, and that it was illegal to hold Madison to that provision. In corroboration, White testified that, immediately at the conclusion of this telephone conversation, Sentell told him Hammond said he should not agree to that provision, that it was inappropriately presented and illegal and Sentell should so state.

There is no dispute that Madison and Respondent never reached agreement as to the terms of a new contract. What occurred following the break, however, is disputed, specifically whether Sentell agreed to certain provisions, including interest arbitration. Sentell testified that he did not. His testimony in this regard is corroborated by White.4 Further, although each of Respondent's witnesses initially testified that Sentell agreed to the interest-arbitration provision, when questioned as to specifically what was said, such agreement is not evident. Thus, Stewart initially testified that at the end of the October 29 meeting, Sentell's position with respect to article X was that he objected to section 2 (LJAB) but had no problem with the remainder of the article. When asked to relate specifically what Sentell said, however, he testified that, in response to Burk's inquiry as to whether he would accept a settlement whereby jurisdiction was given to the production workers and the LJAB was eliminated, Sentell replied, "I have no problem with the National, I have a prob-

<sup>&</sup>lt;sup>3</sup> See App. B for full text of art. X.

<sup>&</sup>lt;sup>4</sup>There is a dispute as to whether White was present at the conclusion of the meeting. White and Sentell testified that he was. Pierce did not testify in this regard. Stewart was unsure. Burk testified that White was not present for the entire meeting. Stephens testified that White did not return after Sentell's telephone call to Madison's attorney. He admits, however, that he told a Board agent that he thought White was there for the entire meeting but would have to review his notes. A review of his notes revealed no reference to White not being present for the entire meeting. In view of the uncertain and/or conflicting nature of the testimony of Stewart and Stephens and consistent with my other credibility findings, I credit White and Sentell

lem with the Local and I couldn't agree to that." He further admits that Sentell did say that he objected to the interest-arbitration provision but he does not recall Sentell saying that the provision was illegal. Pierce admits that Sentell was never specifically asked if he agreed to article X, section 8 and that he never heard Sentell specifically say that he agreed to that provision. According to him, they listed all the things out to him and asked, "Do you agree to this?" Sentell answered, "Yes."

Contrary to Stewart, Stephen denies that, at any time during the meeting, Sentell said he had a problem with the interest-arbitration provision. According to him, once the LJAB provision was resolved, Sentell said he had no problem with the interest-arbitration provision. Yet, his notes state that Sentell did not want interest arbitration or to have Madison's new agreement negotiated by the LJAB. Similarly, although Burk testified that Sentell said he would agree to article X and other provisions if that was the decision of the panel, he admits that his notes state, "John would agree to three years and 10-8, and pay two weeks to each man, but Union must drop lawsuit." Stewart said, "No way."

In view of these conflicts, I find the testimony of Respondent's witnesses to be unreliable. I also find it unlikely that Sentell would suddenly drop his opposition to the interest-arbitration clause, particularly when he had just been advised by his attorney that he should not agree to this clause since it could not be forced on Madison or yield his position that any agreement must include a resolution of the lawsuit. I also note that according to Burk's notes Sentell's agreement was contingent on the dropping of the lawsuit, which Respondent refused to do. I found Sentell to be a more reliable witness. Accordingly, I credit his version of what occurred.

According to Sentell's credited testimony, when he returned to the meeting, he said he thought the LJAB step in the grievance-arbitration procedure was a kangaroo court and that agreement by him to the procedure would lock him into the remaining 2 years of a 3-year contract and then into another 3 years for a total of 5 years without knowing the final monetary outcome. Pierce asked if he would accept interest arbitration in return for elimination of the LJAB. Sentell said he could not agree to that. At some point, Sentell said he had just spoken to his lawyer and he wanted to reiterate that article X, section 8 is illegal and could not be forced on Madison. He said the \$25,000 was a main issue, that it did not seem that the parties could reach agreement and NJAB was going to have to impose a contract because he did not agree to anything.

On October 28, the NJAB issued their decision determining, inter alia, that Madison and Respondent would be bound by the Association contract, including article X, section 8 (the interest-arbitration provision) but excluding section 2 which provides an appeal to the Local Joint Adjustment Board (LJAB) as the second step in the grievance-arbitration procedure. Instead, they determined that the second step would be bypassed and grievances would go directly from the first step to the third-step panel appointed by the cochairmen of the NJAB. As to the jurisdictional issue, the decision determined that certain traditional HVAC work would be performed by the outside employees, that Madison in its

sole discretion could determine if additional job functions should be performed in the shop or on the company grounds by outside employees, and that any work not specifically mentioned would fall within the jurisdiction of the production agreement. The decision does not recite that any portion of the decision was based on any agreement of the parties.

On April 14, 1994, Respondent filed a verified petition to confirm and enforce arbitration award in the United States District Court requesting that the court enforce the contract imposed by the NJAB and thereafter, the court issued an order staying the proceeding until after the issuance of the Board decision here.

#### B. Conclusions

Section 8(d) obligates employers and unions to bargain in good faith with respect to wages, hours, and other terms and conditions of employment. Anything not related to these matters is a nonmandatory subject of bargaining which neither party may insist on to the point of impasse. NLRB v. Borg-Warner Corp., 356 U.S. 342 (1958). It is well established that an interest-arbitration clause is a nonmandatory subject of bargaining since it relates to the relationship between the parties rather than to wages, hours, or other terms and conditions of employment. Sheet Metal Workers Local 38 (Elmsford Sheet Metal Works), 231 NLRB 699; Sheet Metal Workers Local 20 (George Koch Sons), 306 NLRB 834 (1992).

I find that by the end of the July 6 bargaining session, Respondent and Madison had reached an impasse due, in part, to Respondent's insistence that a collective-bargaining agreement include an interest-arbitration provision, a nonmandatory subject of bargaining. Further, by submitting the interest-arbitration provision to the NJAB on July 12, Respondent acknowledged that an impasse had been reached and that it was continuing to insist on the inclusion of this provision in any collective-bargaining agreement with Madison. I therefore find that Respondent violated Section 8(b)(3) of the Act by insisting to impasse that a collective-bargaining agreement with Madison include an interest-arbitration provision.

Further, since the obligation to bargain continues after impasse and since Madison never agreed to an interest-arbitration clause, the filing of a petition to enforce a collective-bargaining agreement which includes an interest-arbitration clause imposed on Madison and Respondent by NJAB is a continuation of the refusal to bargain and is also violative of Section 8(b)(3) of the Act.

## CONCLUSIONS OF LAW

- 1. Madison is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
- 3. By bargaining to impasse on an interest-arbitration clause, a nonmandatory subject of bargaining, Respondent has violated Section 8(b)(3) of the Act.
- 4. By attempting to enforce the decision of the National Joint Arbitration Board as to a collective-bargaining agreement containing an interest-arbitration clause, Respondent has violated Section 8(b)(3) of the Act.
- 5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>&</sup>lt;sup>5</sup> It is not clear whether this latter statement was before or after the break.

#### REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

#### **ORDER**

The Respondent, Sheet Metal Workers' International Association, Local Union No. 359, AFL–CIO, Phoenix, Arizona, its officers, agents, and representatives, shall

- 1. Cease and desist from
- (a) Refusing to bargaining with Madison Industries, Inc. of Arizona, by insisting to impasse that an interest-arbitration clause, a nonmandatory subject of bargaining, be included in any new collective-bargaining agreement.
- (b) Insisting on compliance with, or attempting to enforce the award of the National Joint Adjustment Board as to, a new collective-bargaining agreement containing an interestarbitration clause.
- (c) In any like or related manner refusing to bargain collectively with Madison Industries, Inc. of Arizona by insisting on the inclusion in the collective-bargaining agreement of provisions or proposals not related to wages, hours, and other terms or conditions of employment.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Bargain with Madison Industries, Inc. of Arizona concerning the wages, hours, and other terms and conditions of employment for employees in the following appropriate bargaining unit.

All employees of the Employer performing the work set forth in Article I of the collective bargaining agreement between Respondent and the Air Conditioning Contractors of Arizona effective from August 1, 1990 through July 31, 1993.

- (b) Notify Madison Industries, Inc. of Arizona that Respondent will not insist to impasse, as a condition of a new collective-bargaining agreement, on continuation of the provisions of article X, section 8 of the bargaining agreement which expired on July 31, 1993.
- (c) Post at Respondent's offices and meeting halls copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be

<sup>6</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

- (d) Sign and mail sufficient copies of the notice to the aforesaid Regional Director for posting by Madison Industries, Inc. of Arizona, if it is willing, the notice to be posted in all locations where notices to employees are customarily posted.
- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Madison Industries of Arizona, Inc. by insisting to impasse that an interest-arbitration clause, a nonmandatory subject of bargaining, be included in any new collective-bargaining agreement.

WE WILL NOT insist on compliance with, or attempt to enforce the award of the National Joint Adjustment Board as to a new collective-bargaining agreement containing an interest-arbitration clause.

WE WILL NOT in any like or related manner refuse to bargain collectively with Madison Industries, Inc. of Arizona by insisting on the inclusion in a collective-bargaining agreement of provisions or proposals not related to wages, hours, and other terms or conditions of employment.

WE WILL bargain with Madison Industries, Inc. of Arizona concerning the wages, hours, and other terms and conditions of employment for employees in the following appropriate bargaining unit:

All employees of Madison Industries, Inc. of Arizona performing the work set forth in Article I of the collective bargaining agreement between Sheet Metal Workers' International Association, Local Union No. 359, AFL–CIO and the Air Conditioning Contractors of Arizona effective from August 1, 1990 through July 31, 1993.

WE WILL notify Madison Industries, Inc. of Arizona that we will not insist to impasse, as a condition of a new collection-bargaining agreement, on continuation of the provisions of article X, section 8 of the bargaining agreement which expired on July 31, 1993.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 359, AFL—CIO

# APPENDIX B

The Union and the Employer, whether party to this Agreement independently or as a member of a multiemployer bargaining unit, agree to utilize and be bound by this article.

<sup>7</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

SECTION 1. Grievances of the Employer or the Union, arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized representative of the Union, if possible. Both parties may participate in conferences through representatives of their choice.

To be valid, grievances must be raised within thirty (30) calendar days following the occurrence giving rise to the grievance, or, if the occurrence was not ascertainable, within thirty (30) calendar days of first knowledge of the facts giving rise to the grievance.

SECTION 2. Grievances not settled as provided in Section 1 of this article may be appealed by either party to the Local Joint Adjustment Board where the work was performed or in the jurisdiction of the employer's home local and such Board shall meet promptly on a date mutually agreeable to the members of the board, but in no case more than fourteen (14) calendar days following the request for its services, unless the time is extended by mutual agreement of the parties, or Local Joint Adjustment Board. The Board shall consist of representatives of the Union and of the local Employers' Association and both sides shall case an equal number of votes at each meeting. The local Employers' Association, on its own initiative, may submit grievances for determination by the Board as provided in this section. Except in the case of deadlock, a decision of a Local Joint Adjustment Board shall be final and binding.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in section 1 of this article, unless the time is extended by a mutual agreement of the parties.

SECTION 3. Grievances not disposed of under the procedure prescribed in section 2 of this article, because of a deadlock or failure of such Board to act, may be appealed jointly or by either party to a panel consisting of one (1) representative appointed by the labor cochairman of the National Joint Adjustment Board and one (1) representative appointed by the management cochairman of the National Joint Adjustment Board. Appeals shall be mailed to the National Joint Adjustment Board. Notice of appeal to the panel shall be given within thirty (30) days after termination of the procedures prescribed in section 1 of this article. Such Panel shall meet promptly, but in no event more than fourteen (14) calendar days following receipt of such appeal, unless such time is extended by mutual agreement of the panel members. Except in case of deadlock, the decision of the panel shall be final and binding.

Notwithstanding the provisions of paragraph 1 of this section, and employer who was not a party to the labor agreement of the area in which the work in dispute is performed may appeal the decision of the Local Joint Adjustment Board from that area, including a unanimous decision, and request a panel hearing as set forth in section 3 of this article, providing such appeal is approved by the cochairmen of the National Joint Adjustment Board.

SECTION 4. Grievances not settled as provided in section 3 of this article may be appealed jointly or by either party to the National Joint Adjustment Board. Submissions shall be made and decisions rendered under such procedures as may be prescribed by such Board. Appeals to the National Joint Adjustment Board shall be submitted within thirty (30) days after termination of the procedures prescribed in section 3 of

this article. (Copies of the procedures may be obtained from the National Joint Adjustment Board.)

SECTION 5. A Local Joint Adjustment Board, panel, and the National Joint Adjustment Board are empowered to render such decisions and grant such relief to either party as they deem necessary and proper, including awards of damages or other compensation.

SECTION 6. In the event of noncompliance within thirty (30) calendar days following the mailing of a decision of a Local Joint Adjustment Board, panel, or the National Joint Adjustment Board, a local party may enforce the award by any legal means including proceedings in a court of competent jurisdiction in accord with applicable state and Federal law. If the party seeking to enforce the award prevails in litigation, such party shall be entitled to its costs and attorney's fees in addition to such other relief as is directed by the courts.

SECTION 7. Failure to exercise the right of appeal at any step thereof within the time limit provided therefore shall void any right of appeal applicable to the facts and remedies of the grievances involved. There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this agreement as set forth in the preceding section of this article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this agreement shall be settled as hereinafter provided:

(a) Should the negotiations for renewal of this agreement become deadlocked in the opinion of the union representative(s) or of the employer(s) representative, or both, notice to that effect shall be given to the National Joint Adjustment Board.

If the cochairmen of the National Joint Adjustment Board believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the cochairmen of the National Joint Adjustment Board shall be promptly so notified without recommendation from the panel representatives. Should the cochairmen of the National Joint Adjustment Board fail or decline to appoint a panel member or should notice of failure of the panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

In addition to the mediation procedure set forth above or as an alternate thereto, the cochairmen of the board may each designate a member to serve as a subcommittee and hear the dispute in the local area. Such committees shall function as arbitrators and are authorized to resolve all or part of the issues. They are not, however, authorized to deadlock and the matter shall be heard by the National Joint Adjustment Board in the event a subcommittee is unable to direct an entire resolution of the dispute.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b) Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the board. Any briefs filed by either party including copies

- of pertinent exhibits shall also be exchanged between the parties and filed with the National Joint Adjustment Board at least twenty-four (24) hours in advance of the hearing.
- (c) The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this section. In addition, the cochairmen of the National Joint Adjustment Board shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, telegram, or telephone notification.
- (d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.